



Paper No. 6

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In re Application of:  
McDonald, *et al.*  
Application No. 09/484,292  
Filed: January 18, 2000  
Attorney Docket No. 9D-HR-19273-McDonald

**OFFICE OF PETITIONS  
DECISION GRANTING  
PETITION**

This is a decision on the petition under 37 C.F.R. §1.8(b), or in the alternative, 37 C.F.R. §1.137(b), filed on February 7, 2002.

*Application History.*

Petitioner filed this application on January 18, 2000. While a filing date was granted, the application was lacking a properly executed declaration. Therefore, the office of initial patent examination mailed a notice to file missing parts to the address of record on April 6, 2000, requesting a properly executed declaration and the \$130.00 late filing surcharge required under 37 C.F.R. §1.16(e). The notice set a two month extendable period for replying. However, no reply was received within that time. Therefore, the application lapsed into an abandoned state on June 7, 2000.

*The Law.*

**§ 1.8 Certificate of mailing or transmission.**

(a) ...

(b) In the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received in the Patent and Trademark Office, and the application is held to be abandoned or the proceeding is dismissed, terminated, or decided with prejudice, the correspondence will be considered timely if the party who forwarded such correspondence:

(1) Informs the Office of the previous mailing or transmission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence;

(2) Supplies an additional copy of the previously mailed or transmitted correspondence and certificate; and

(3) Includes a statement which attests on a personal knowledge basis or to the satisfaction of the Commissioner to the previous timely mailing or transmission. If the correspondence was sent by facsimile transmission, a copy of the sending unit's report confirming transmission may be used to support this statement.

(c) The Office may require additional evidence to determine if the correspondence was timely filed.

*Analysis.*

There is no statement by the individual with personal knowledge regarding the timely mailing of the correspondence. Mr. George L. Rideout, Jr. signed the certificate of mailing on the reply. Therefore, he is assumed to be the individual who forwarded the correspondence. Petitioner has only supplied a narrative of events surrounding the mailing of the response, signed by himself. A statement from Mr. Rideout would be required to satisfy the requirement under 37 C.F.R. §1.8(b)(3) of a statement which attests "on a personal knowledge basis to the previous timely mailing or transmission."

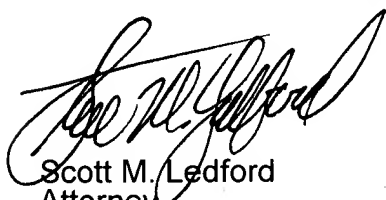
In the absence of Mr. Rideout's statement, *this petition must be and is dismissed* for failure to satisfy the requirements of 37 C.F.R. §1.8.

However, in the alternative, Petitioner has requested relief under 37 C.F.R. §1.137(b). All requirements for relief under that rule have been met. Accordingly, *the petition under 37 C.F.R. §1.137(b) is **granted***.

The request to maintain the current power of attorney is accepted.

This application will be returned to the Office of Initial Patent Examination for processing in accordance with this decision.

Telephone inquiries concerning this matter may be directed to the undersigned in the Office of Petitions at (703) 306-5593.



Scott M. Ledford  
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Office of Petitions  
Office of the Deputy Assistant Commissioner  
for Patent Examination Policy